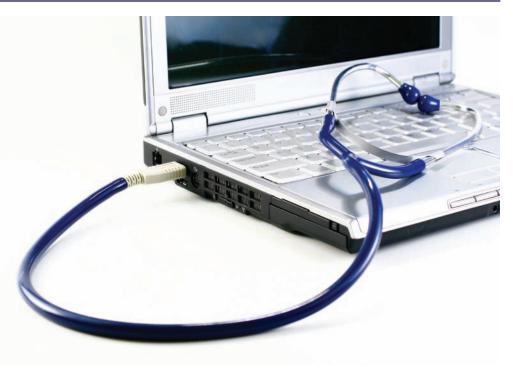
Risk Management



Telepsychiatry and Risk Management

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This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. (www.prms.com), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney. Note: The information and recommendations in this article are applicable to physicians and other healthcare professionals so "clinician" is used to indicate all treatment team members.

QUESTION

I am thinking about incorporating some form of telemedicine into my practice. I hope to expand my practice and be able to treat a few of my patients who live quite a distance from my office. A few of my colleagues have done this using their office desktop computers and software that allow high-quality video calling over the internet. Another colleague practices telemedicine through the hospital where he works. What do I need to consider before I take on a telemedicine endeavor?

ANSWER

As the use of technology in medicine rapidly expands, psychiatrists inevitably will consider how some of those technologies might be applied to their practices. Telemedicine is the use of technology to facilitate clinical care at a distance and includes, among many fields of telemedicine, telepsychiatry. Telemedicine technologies include, but are not limited to, telephone, e-mail, and real-time videoconferencing.

Telepsychiatry, if done well, can benefit patients. It also presents significant risks for the unwary. The following issues should be thoughtfully and carefully considered before adopting telepsychiatry into your practice.

PRELIMINARY CONSIDERATIONS

The first step in any telepsychiatry endeavor is to define what you want to do and how you will do it. This is essentially business planning; determining what services will be offered, to whom they will be offered, and the technology used to offer them. The article entitled, "Practice Parameter for Telepsychiatry with Children and Adolescents," by Myers K et al¹ provides a thorough discussion of the

process of and considerations in starting a telepsychiatry practice. This parameter is relevant to any specialty or subspecialty. Before starting a telepsychiatry practice you should answer the following questions:

- 1. Will you be providing diagnoses or prescriptions?
- 2. Will you be doing psychoanalysis or cognitive behavioral therapy?
- 3. Will you be treating patients with schizoaffective disorder or major depression?
- 4. Will you be providing consults to general practitioners or to hospital emergency departments during hours when they do not have a psychiatrist in the hospital?

Traditionally, providing consultations to other physicians has been a low-risk practice model. Telepsychiatry consultations to nonphysician providers may be construed as supervision, which would not necessarily rule out a telepsychiatry application, but will require consideration as to whether supervision via telepsychiatry is permissible.

A traditionally low-risk endeavor often not mentioned in discussions of telepsychiatry is education. Will you be teaching, lecturing at Grand Rounds, and/or conducting journal club with residents?

Once you determine what you will be doing, technologies sufficient for the endeavor will need to be applied. Some state licensing boards establish regulations describing the minimum capabilities of telemedicine equipment. Professional organizations publish standards for technologies. Myers K et al¹ address technology standards. Practice guidelines from the American Telemedicine Association (ATA)² also contain technology standards. You

TABLE 1. Telepsychiatry and risk management	
Preliminary Questions	 What exactly will I be doing? How will I be doing it? For whom will I be providing my telemedicine services?
Subsequent Questions	Do I need a license?Can I deliver good clinical care?

will need to assure what bandwidth and resolution are sufficient to detect all aspects of patient evaluations.

You also should consider and plan for administrative and clinical support. For example, equipment will need to be maintained and records created and stored. If providers will be on location with patients, what are the credentials and training of those providers? Back-up safety systems must also be identified and maintained.

You should engage in thoughtful patient selection. Psychiatrists routinely identify patients who are and are not good fits for the psychiatrist's particular practice. In the context of telepsychiatry, it may be helpful to define a general patient population for whom telepsychiatry would be an appropriate (or inappropriate) method of delivering care. For example, you may decide to exclude patients who are being treated for addiction or substance dependence issues from telepsychiatry practice. Alternatively, you may decide to accept patients who are referred to you by trusted colleagues for telepsychiatry treatment. In any event, you should be comfortable that you have a good basis for concluding that telepsychiatry is an appropriate

treatment delivery mechanism and, as with any other exercise of clinical judgment, you should document the reasons for your decision. Ultimately, you will be responsible for the choice of telepsychiatry as a treatment delivery vehicle.

SUBSEQUENT QUESTIONS

Once you have determined exactly what will be done and how it will be done, you should be sure to address the following (Table 1):

- 1. **Do I need a license?** Ensure all legal requirements, such as licensure requirements, have been met.
- 2. **Can I deliver good clinical care?** Ensure the remote patient's clinical needs can be met through telepsychiatry.

Licensure and other legal requirements. You should contact all applicable licensing boards to determine whether an additional medical license is needed and whether the type of practice you want to engage in is permissible.

State licensing boards and legislatures view the location of the patient as the place where "the practice of medicine" occurs. If you wish to engage in telepsychiatry practice across state lines, you will need to determine whether an additional medical license is needed. Some states offer limited licenses for the practice of telemedicine. Having the patient in the same state as you removes the need to determine whether additional state medical licenses are required.

Whether your telepsychiatry activities occur solely in your home state or in other states, you will still need to contact your home state licensing board to determine whether there are statutes or regulations addressing specific telemedicine

TABLE 2. Examples of lost abilities in telepsychiatry	
TECHNOLOGY	ABILITIES POTENTIALLY LOST
Telephone	Ability to see, smell, or touch the patient
E-mail	Ability to see, smell, hear, or touch the patient Ability to confirm the person is the patient
Real time videoconferencing	Ability to smell or touch the patient

requirements. The same would need to be done for each state where patients are located when the telepsychiatry practice occurs across state lines.

Licensing board regulations regarding telepsychiatry practice often address whether an in-person examination is required before treatment via telepsychiatry and how that examination is to be carried out. Access to medical records at remote patients' sites and the psychiatrist's site and security of patient information are other areas of concern that need to be addressed before engaging in telepsychiatry.

The standard of care in telemedicine. Utilizing telepsychiatry does not alter the standard of care to which you will be held; it is the same standard of care that would apply if the patient were in your office or facility.

Understanding this point is crucial. Although "the standard of care" is a vague concept, it represents the idea that physicians should provide at least minimally acceptable and clinically appropriate diagnosis and treatment to all patients, regardless of circumstances.

There are many sources that may help define the standard of care, such as statutes, regulations, peerreviewed studies, professional association treatment guidelines (e.g., American Medical Association,³ American Psychiatric Association⁴), medical texts and treatises, and licensing board policies. Rarely is any one source a definitive statement of the standard of care, but rather each contributes to a discussion about whether a given action is acceptable medical practice.

From a risk management perspective, licensing board statements are particularly important. After all, if an aggrieved patient files a complaint with the board, you will be investigated by the same entity that issued a statement potentially relevant to your conduct. Having conformed to the board's stated position then makes you more likely to prevail in the investigation, whereas having ignored the board's position may place your license in jeopardy.

Some licensing boards have barely addressed the issue of telemedicine while others have established comprehensive standards for the practice of telemedicine. Licensing board regulations and position statements often focus on tasks that are expected of psychiatrists during the telepsychiatry encounter that will constitute "minimally acceptable" evaluation and treatment. You should know what is expected by all relevant medical or licensing boards.

In further considering standard of

care factors, some obvious issues emerge when evaluating the appropriateness of telepsychiatry practice. The standard of care factors specific to telepsychiatry relate to both the evaluation of patients and intervention.

EVALUATION CONSIDERATIONS

When a patient is not physically present with you, all ability to evaluate and intervene has been lost. Technology can be used as a tool for restoring some lost abilities. However, technology will not always be able to restore all abilities, nor will it always completely restore any ability (Table 2).

Consider a patient for whom personal hygiene is clinically significant. Even when using the best real-time, audio-visual connection, you will not be able to smell the patient. The same is true for a patient with diabetes or a patient who abuses alcohol. Visual and auditory signs may alert you to severe intoxication or glucose imbalance, but it is important for you to be aware of abilities that the technology does not restore, so that any remaining limitations can be appropriately addressed.

Another consideration may be the way in which technology is likely to impact a given patient's propensity to disclose clinically significant information. This may work against or in support of using technology, depending on the individual patient. Will the technology create a lessintimate interaction, and if so, will this make the patient more or less likely to disclose important information? How will such a setting impact progression toward treatment goals?

As part of meeting the standard of care in any telepsychiatry encounter, you must be able to confirm that the person requesting treatment via

technology is in fact the patient. Additionally, a history and physical examination must be sufficient to establish patients' diagnoses.

It is crucial for you to evaluate the ways in which the technology is likely to impact the ability to evaluate the patient. Once lost abilities are identified, you must determine whether and to what extent you can restore or mitigate those lost abilities in order to meet the standard of care. For example, you may need to consider how the traditional play session with younger children might be conducted when treating remotely. AACAP's *Practice* Parameter includes some options for dealing with this.1 You should keep in mind that technology is only a tool that can partially restore lost abilities when evaluating patients at a distance, but by itself, technology cannot completely restore all lost abilities.

INTERVENTION

You will need to obtain patients' informed consent for treatment via telepsychiatry. Even patients who are familiar and comfortable with a wide range of technologies may not understand some aspects of telepsychiatry. Part of this conversation should include discussing the limitations of telepsychiatry. The chosen telepsychiatry method may also present privacy considerations not present in traditional office-based practice. If so, these should be incorporated into the informed consent discussions as well. You should also be aware of any laws, regulations, or rules in the patients' states related to specific requirements for informed consent in telemedicine.

You should consider a plan to verify the location of the patient during each telepsychiatry encounter. This is important for proper intervention as well as licensure issues. There may be several different options for accomplishing this. It may be that simply asking the patient at the beginning of the session would suffice, or it may be that you need somehow to independently verify the origin of the signal. For example, some technologies may allow for geolocation of the patient, whether by global positioning system (GPS), "pinging," or some other method.

This column does not include specific technologies, but you should be confident that your method of location verification is reliable.

You will also need to be familiar with what emergency resources are available at patients' locations and how to activate them, as well as a general idea of the expected response time. In other words, you

In some cases, having an actively collaborating local physician available to provide same-day prescriptions for controlled substances (especially Schedule II substances), betweensession coverage, and immediate intervention in urgent situations may be the best approach to satisfying clinical and legal concerns, and therefore is worth consideration. A licensed clinician has a substantial incentive to ensure that the patient's location is accurately represented to vou.

A local clinician can further restore many of your lost abilities. For example, a local clinician would be able to observe the patient's gait as she enters the building; detect any abnormal or worrisome odors; intervene in the event of a clinical emergency (e.g., seizure, active suicidality); and perform any needed physical evaluations (e.g., blood

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should be as familiar with the resources available to a particular patient at his or her location as you would be with the resources available to patients seen in-office. Ideally, the informed-consent process should incorporate a discussion of how and under what conditions you will activate emergency response resources. It is also important to be familiar with the nonemergency medical resources available to the patient.

How you will monitor patients at a distance will also need to be considered. How will laboratory tests be obtained and interpreted? What will be your availability between sessions?

pressure, pulse, and respiration rate monitoring). Clinicians with psychiatric training, such as psychiatric nurses, would be especially valuable in restoring lost abilities.

Even the best technology sometimes fails. You should consider a contingency plan to deal with technology failures. Remember that because the standard of care is the same as for in-office visits, a technology failure by itself is not likely to be viewed by courts or licensing boards as a valid reason for failing to provide needed care.

Of course, you should have a mechanism in place to ensure that you have the ability to properly evaluate on an ongoing basis whether telemedicine is an appropriate treatment delivery mechanism for a given patient.

CONCLUSIONS

Telemedicine is a rapidly evolving field that is likely to be used more as technology continues to grow in healthcare. Telepsychiatry has appropriate applications, and the risks associated with it likely will be manageable. You should approach telepsychiatry with an understanding that technology is a tool that can partially restore the lost abilities to evaluate and treat patients at a distance, but that by itself technology cannot completely restore all abilities. You should carefully evaluate whether a particular form of telepsychiatry is appropriate for a given patient, both at the beginning of the treatment relationship and periodically as treatment progresses. You should be aware of the importance of the location of the patient, both for legal and clinical considerations.

Because telemedicine is still an evolving field, many important questions do not yet have clear answers. You should gather as much guidance as possible from state licensing boards, professional organizations, the literature and

research, and colleagues. As always, you should focus on determining whether and how the particular form and method of treatment will help the patient progress toward legitimate treatment goals.

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